

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LEE M.,

Claimant,

and

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Respondent.

OAH Case No. 2012120516

In the Matter of:

RICHARD M.,

Claimant,

and

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Respondent.

OAH Case No. 2012120517

DECISION

These matters, consolidated for hearing, came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on February 4, 2013, in Van Nuys, California.

Claimants' mother, Nafertiti M.,¹ represented Claimants.

¹ Initials have been used to protect Claimant's privacy.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (Regional Center or Service Agency).

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

ISSUE

Should Regional Center fund the following services for Claimants: medical, dental, day care, respite, personal assistance, incontinence supplies, and in-home program?

FACTUAL FINDINGS

1. Claimants are 26-year-old twins who are Service Agency consumers by reason of diagnoses of mental retardation. Their needs and challenges are similar. They reside with their mother and their 27-year-old brother, Childerick M.

2. Claimants are blind, non-verbal, and unable to clearly express their needs. They are somewhat ambulatory, as they can walk on their toes. However, they tend to fall and are typically in their wheelchairs. They are not toilet trained, and require diapers, wipes, and a mattress pad. They have difficulty sleeping. They require total physical care. They require constant supervision to ensure their safety and well-being.

3. Claimants have been Service Agency consumers for most of their lives, although services have not always been provided in the recent past due to lack of agreement regarding the services to be provided and the manner in which they are to be provided.

4. In October 2002, Service Agency conducted an audit of Claimants' mother's provision of parent-vendored day care services, covering the period of March 1 through August 31, 2002. Service Agency concluded that Claimant's mother did not have required records to substantiate claims for payments, and concluded that it had overpaid her \$42,356.04. Service Agency prevailed at a hearing before the Department of Developmental Services, and on March 23, 2004, Claimant's mother was ordered to repay the overpayment. Claimant's mother was unable to make the reimbursement, and was prevented from continuing to act as a parent vendor.

5. On April 26, 2010, after efforts by Consumer Service Coordinator Nita Gatlin to reach an agreement on new IPPs for Claimants had failed, Service Agency sent a letter to both

Claimants and their mother proposing to deactivate their cases, effective May 26, 2010, for failure to sign new IPPs. The letter stated that Claimants' mother had refused to sign the IPPs, unless eight demands for service were met. Service Agency denied each of the requests in the April 26, 2010 letter. Claimants' mother did not sign either of the IPPs or file a fair hearing request challenging the denials of services.

6. On October 1, 2010, another consumer service coordinator, Stephanie Gootman (Gootman) met with Claimants' mother and the family's advocate, Jim Huyck, to reach agreement regarding new IPPs. Claimants were seeking parent-vendored respite and supported living services, incontinence supplies, and home modifications. Gootman thereafter discussed the requests with Service Agency managers and informed Claimants' mother that Service Agency could not authorize parent-vendored services because of the outcome of the audit and the funds owed. Service Agency would need to have a nurse assess the need for non-generic incontinent supplies and for the home modifications. Claimants' mother refused to allow the nurse to meet with Claimants to conduct the assessment. On October 12, 2010, Service Agency mailed a letter to Claimants and their mother denying the requests and explaining the reasons for the denials. Claimants did not file a fair hearing request or sign the proposed IPPs.

7. On June 20, 2012, a new service coordinator, Nicholas Cerabona (Cerabona), met with Claimants' mother to reopen Claimants' cases and to prepare new IPPs. He noted that Claimants qualified for respite services, for diapers and other incontinence supplies, and for personal assistance in lieu of a day program. Cerabona explained that Service Agency could not fund the services directly through Claimant's mother as a parent vendor, but that the services would have to be arranged and funded through agencies. Claimant's mother did not want to work with an agency and requested funding through her as a parent vendor.

8. At the IPP meeting, Claimants' mother also wanted a specific brand of diapers that Claimants had used in the past. Cerabona agreed to explore the availability of the supplies. At the hearing, Cerabona explained that subsequent attempts to meet with Claimant's mother to discuss whether generic incontinent supplies would work were unsuccessful.

9. At the conclusion of the IPP meeting, Claimants' mother and Cerabona signed a document entitled "North Los Angeles County Regional Center Agreement." The parties acknowledged that they had discussed Claimants' outcomes, goals and plans to provide services and supports, that a final copy of the IPP would be mailed in 30 days, and that Claimants had the right to appeal if they disagreed with any part of the IPP. The document also contained the following reservation: "Further resolution is required, as agreement has not been reached regarding the following: [¶] [Consumer Service Coordinator] to get more information on dental services before making a funding decision."

10. a. Claimants have medical and dental needs, some of which are not covered by Medi-Cal. Claimants require dental care, but have been unable to obtain care for some time

because they would first require general anesthesia for a dentist to be able to examine and treat them. Cerabona arranged to have a consulting dental assistant meet with the family to schedule an appointment for the assessment of Claimants' needs and treatment alternatives.

b. Cerabona asked Darlene Mairo, R.D.A. (Mairo), to meet with Claimants and to arrange their meeting with dentists who could assess their needs and develop a treatment plan. Mairo works with dentists who specialize in providing care to clients with special needs. Mairo spoke with Claimants' mother and learned about her concerns, including the need for anesthesia and her past bad experience with certain dentists. Mairo asked for insurance information for Claimants or for their social security numbers so that she could obtain the insurance information. Claimants' mother did not provide the information requested, and Mairo tried to obtain it through Cerabona. Once she obtained the information from Cerabona, Mairo learned that the two consumers had different dental coverage, which would impact the dentist who could be involved and the location of the procedure. Mairo left several messages with Claimants' mother about her options, and requesting instructions to arrange meetings with the dentists. Claimants' mother did not return the messages.

11. On September 13, 2012, Cerabona sent Claimants' mother copies of two IPPs, one for each Claimant, with cover letters requesting signatures on the documents so that services could be provided. In each document, Service Agency proposed the following services for each Claimant: Service Agency to research and fund appropriate incontinent supplies; Service Agency to fund up to 30 hours of respite at the non-sibling rate, funded by parent voucher through an agency; Service Agency to fund eight hours per day of personal assistance in lieu of day program, upon Claimants' agreement to work with an agency; and Service Agency to fund non-generic medical and dental needs attributable to their developmental disability needs and not funded by Claimants' Medi-Cal insurance.

12. Claimants' mother did not sign either proposed IPP or suggest changes. At the hearing, Claimants' mother argued that she had signed an IPP on June 20, 2012. However, the document in question, referred to in factual finding number 9, was not an IPP. It was a document that reflected that agreement had been reached regarding some items, but which clearly indicated that other issues were still subject to further study and discussion. The document itself referred to the IPP being mailed within 30 days.

13. Claimants' mother and their brother detailed the difficulties they face in providing for Claimants' needs. Service Agency does not question the existing needs and is ready to provide services. Claimants' mother testified that she is best suited to oversee services to meet Claimants' needs and questions whether any agency will capably meet their needs.

14. Claimants' mother did not present any evidence that she has commenced the process to become regional center vendor.

15. On October 15, 2012, Service Agency informed Claimants and their mother that Service Agency was denying funding for dental treatment, respite services, personal assistance, and incontinence supplies due to the absence of a signed IPP for either consumer. On December 4, 2012, Claimants, through their mother and conservator, filed fair hearing requests.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. “The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option. ...” (*Id.*)

3. Inasmuch as the IPP is central to the provision of services, the document must be signed by both parties. Welfare and Institutions Code section 4646, subdivision (g), provides: “An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with all components of the plan, they may indicate their disagreement on the plan. Disagreement with specific components shall not prohibit the implementation of services and supports agreed to by the consumer or, where appropriate, his or her parents, legal guardian, or conservator. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.”

Claimants' mother, their conservator, has refused to sign the IPPs and has not provided a reason for her refusal. In these circumstances, Service Agency is not required to fund any service, including medical, dental, day care, respite, personal assistance, incontinence supplies, and in-home program.

4. The apparent reason Claimants' mother refuses to sign the IPPs, as evidenced by her persistent requests to multiple service coordinators, is that the services will not be provided with her as a parent vendor. California Code of Regulations, title 17, section 58886, which became effective August 29, 2011, established a process for what is now called "participant-directed services" through which family members may become "employers" with an agency "co-employer" to provide certain direct services to consumers, namely, day care, nursing, respite, transportation, and community-based training. The co-employer, referred to as a fiscal management service (FMS) co-employer or fiscal management service fiscal/employer agent (FMS F/FA) co-employer, handles payroll and other administrative duties. Claimants' mother did not present any evidence at the hearing that she has commenced the process to become an employer or co-employer pursuant to this process. On the contrary, she has repeatedly told Service Agency representatives that she does not want to work with an agency. Moreover, in the past Service Agency has opposed continued vendorization of Claimants' mother because of the unreimbursed obligation from the 2002 audit.

5. In addition, with respect to dental services, Service Agency is prepared to complete the process to have Claimants examined by dentists and to determine the extent to which their needs exceeds those that can be funded by their insurance. However, Claimants' mother has not fully cooperated with Service Agency to complete the assessment process.

6. Accordingly, by reason of factual finding numbers 1 through 15 and legal conclusion numbers 1 through 5, Service Agency is not required to fund medical, dental, day care, respite, personal assistance, incontinence supplies, or in-home program services.

ORDER

Claimant's appeal is denied and Service Agency need not fund medical, dental, day care, respite, personal assistance, incontinence supplies, or in-home program services.

Dated: February 19, 2013

_____/s/_____
Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.